

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THOMAS LUKE HIGGINS, #901345	§	
VS.	§	CIVIL ACTION NO. 4:08cv466
DIRECTOR, TDCJ-CID	§	

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Don D. Bush, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be dismissed without prejudice since the Petitioner did not have permission from the Fifth Circuit to file a successive petition. 28 U.S.C. § 2244(3)(A). The Petitioner filed objections stressing that he was seeking to obtain permission from the Fifth Circuit to file a successive petition.

The Report of the Magistrate Judge, which contains his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Petitioner are without merit. It is specifically noted that the Fifth Circuit denied him permission for leave to file a successive petition on April 28, 2009. *In re Higgins*, No. 09-40120 (5th Cir. Apr. 28, 2009) (docket entry #13). As such, the Petitioner may not proceed with the current petition, and the Report and Recommendation correctly concluded that petition should be dismissed. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petition for a writ of habeas corpus is **DISMISSED** without prejudice.
It is further

ORDERED that all motions not previously ruled on are hereby **DENIED**.

SIGNED this 22nd day of May, 2009.

A handwritten signature in black ink, reading "Michael H. Schneider". The signature is written in a cursive style with a large initial "M".

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE